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IN THE

Supreme Court of the United States

No. 995, October Term, 1965

MARIA RIVERA DELGADO,
Petitioner,

v.

THE SUPREME COURT OF PUERTO RICO,
Respondent.

PETITION FOR WRIT OF CERTIORARI

VICENTE GEIGEL POLANCO
Box 4029, San Juan, Puerto Rico
Attorney for Petitioner

IN THE

Supreme Court of the United States

No. ....., October Term, 1965

MARIA RIVERA DELGADO,
Petitioner,

v.

THE SUPREME COURT OF PUERTO RICO,
Respondent.

PETITION FOR WRIT OF CERTIORARI

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To the Hon. Court:

A writ of certiorari is sought in this case to review the order entered by the Supreme Court of Puerto Rico on september 16, 1965.

Jurisdiction of the Court

The jurisdiction of this Hon. Court is invoked on the following grounds:

(a) The order sought to be reviewed was entered by the

Supreme Court of Puerto Rico on September 16, 1965. The motion for reconsideration, filed by petitioner on October 26, 1965, and by the Solicitor General on October 19, 1965, were disposed of on November 9, 1965, and October 22, 1965, respectively.

(b) On motion of the petitioner on September 30, 1965, the Supreme Court of Puerto Rico granted a stay of the Mandate until December 15, 1965, to file a petition for certiorari before this Hon. Court.

(c) The jurisdiction of this Court rests on 28 U. S. C. A., Section 1258.

Questions Presented for Review

A. On June 25, 1964, The People of Puerto Rico filed an information in this case against the defendant-appellant, María Rivera Delgado, for the crime of petit larceny. The trial was held before the District Court of Puerto Rico, Río Piedras Part. The Court was presided by the Hon. Pedro Pérez Pérez, District Judge. The Court sentenced the defendant to pay fine of $25.00 or, in default thereof, to one day in jail for each unpaid dollar.

The defendant considered that the trial court committed manifest errors in its weighing of the evidence, as well as various errors of law, and appealed from its judgment to the Hon. Superior Court of Puerto Rico, San Juan Part.

Defendant-appellant assigned the following errors as committed by the District Court, Río Piedras Part:

1. The trial court committed error in dismissing defendant's motion to the effect that the information did not allege the essential elements of the crime of petit larceny.
2. The Court committed error in refusing to acquit the defendant paremptorily, inasmuch as The People failed to prove the essential elements of the crime of larceny.
3. The evidence introduced was insufficient to convict the defendant of the crime of petit larceny.
4. The evidence for the defense showed beyond reasonable doubt that the defendant did not commit the crime with which she was charged.

5. The evidence for The People and the evidence for the defense show that there is reasonable doubt and such doubt must be decided in favor of the defendant.

6. The Honorable trial Judge subjected the defense witnesses to an intense examination of such a nature it violated the defendant's substantial rights.

7. The trial Court committed error in subjecting the witnesses for the defense to an examination that violated the constitutional right of the defendant to a due process of law.

On June 24, 1965, the Honorable Superior Court of Puerto Rico, San Juan Part, Criminal Section, presided by the Hon. Judge César Bobonis-Díaz, entered Judgment affirming the one entered by the Río Piedras Part of the District Court against appellant herein, in case No. 64-4897, for the crime of petit larceny.

On July 8, 1965, appellant moved for reconsideration of the judgment and in support of her motion for reconsideration she specifically referred therein to the request of the Hon. District Attorney who moved for the reversal of the judgment on the basis of **People v. Nieves Alvelo** 88 P.R.R.___, decided April 1964; **People v. Aletriz**, 85 P. R. R.____, and **People v. de Jesús Villanueva**, decided May 29, 1964.

On July 12, 1965, the Superior Court, San Juan Part, denied the motion for reconsideration.

Statues Involved

B. The law applicable to the matter presented for review is to be found in Rule 217, Rules of Criminal Procedure of Puerto Rico (34 L.P.R.A. App.) and Rule 15 of the Rules of the Supreme Court of Puerto Rico (4L.P.R.A.App.I), effective since July 1, 1961. Article II, Section 7 of the Constitution of the Commonwealth of Puerto Rico, Amendment V and XIV of the Constitution of the United States, Section 426, Puerto Rico Penal Code.

The information filed against appellant herein does not allege the essential elements of the crime of petit larceny with which defendant was charged. The law defines the crime of larceny as "the felonious stealing, taking, carrying,

leading, or driving, away, the personal property of another". Section 420, Penal Code. However, this Hon. Court has said: "The criminal intent to deprive the owner permanently of his property is an essential element of the crime of larceny". People v. Acevedo, 43. - P.R.R. 340.

"Where in a prosecution for larceny the evidence only shows possession by the defendants of the stolen object, withou any other circumstance connecting him with the theft, it is not sufficient". People v. Domínguez, 36 P.R.R. 419. We contend that the crime of larceny includes a series of circumstances constituting essential elements and that in the absence of any one of these, the crime, is not committed. People v. Andrade, CR-62-282 (June 28, 1963), Bar Association Ref. 1963-165: People v. Nieves, CR-62-99 (September 30, 1963), Bar Association Ref. 1963-156.

Statement of the Case

C. Defendant entered Bargain Town, a commercial establishment, lawfully obtained certain articles and got into line at one of the cash registers in order to pay for them. Defendant was accompanied by her minor child, Awilda López, and when the latter went to a refreshment machine, her mother went after her among a large crowd of people, intending to return to the line to pay. It was at that moment that she was grabbed by Antonio Rodríguez Ocasio, an employee of the establishment, who, without giving the customer any explanation, pushed her and led her into the store office. In our opinion it is the employee who is responsible for the crime, by overdoing his duties.

In these cases, the felonious intent of converting the property, preceded by an unlawful carrying away, are essential elements of the crime of larceny and they must be alleged and proved. The People did not prove that the carrying away was unlawful or that the defendant converted the property to her own use; on the other hand, the defense showed beyond reasonable doubt that the crime charged was not committed.

The evidence for The People as a whole was insufficient to convict the defendant of the crime of petit larceny. A per-

son who proves that her purpose in leaving the line was to look for her minor child where a large crowd had gathered, did not have the criminal intent of performing or committing an unlawful act such as larceny. A specific intent is a matter of fact an essential element of the crime of larceny. "A specific intent is manifested by the means, manner, and circumstances of performing an act." **People** v. **Colón**, 80 P.R.R. 351.

We are of the opinion that in this case the procedings were not conducted in the mannner prescribed by law. In our criminal procedure the District Judges must make the investigation, examining the witnesses for the prosecution and cross-examining the witnesses for the defense. Now, we consider that this must not be stretched beyond what is reasonable and fair in order to discover the truth. When the cross-examination of the witnesses for the defense is of such a nature that it places the witnesses and the defendant in one and the same position, we think that the trial is not the impartial trial to which the defendant is constitutionally entitled.

We again emphasize the fact that a judge who is to weigh the evidence must not act as though he were the prosecuting attorney. We respectfully affirm that the cross-examination conducted in this case in the District Court, Río Piedras Part, violated the defendant's substantial rights.

Our Constitution guarantees an impartial trial by virtue of the due process of law. In Puerto Rico a District Judge is put in the position of being a judge, an arbitrator, and at the same time he must act as a prosecuting attorney to ascertain the facts, but in the investigation of facts he must not take the position of ridiculing and contradicting the witnesses for the defense; if such thing happens, the constitutional principle of a due process of law is violated. The extent to which the cross-examination of witnesses for the defense by a District Judge may reach should be established once and for all. As well put by the Hon. Zoilo Dueño González, San Juan District Attorney in this case:

"With respect to the Court's cross-examination of the child, Awilda López, defendant's daughter, as well as of de-

fendant herself — which we do not copy in order not to lengthen this brief — we think that if this Hon. Court reads said testimonies it must unavoidably reach the conclusion that the trial judge went beyond what is reasonable in the sacred mission with which the law entrusts him, thereby depriving the defendant of an impartial and fair trial which our Constitution, as well as our procedural laws, guarantee to every defendant."

"We think that the instant case presents the same situation involved in **People v. Nieves Alvelo**, decided September 30, 1963; **People v. Martínez Acevedo**, decided April 25, 1963; **People v. Aletriz**, decided June 12, 1962, and **People v. de Jesús Villanueva**, decided May 29, 1964, where, reversing the judgments and ordering new trials for the defendants, our Supreme Court stated:

> " '...the trial judge submitted the witnesses to an improper interrogatory that deprived the appellant of an impartial trial and a fact discharged the mission reserved by law to the prosecuting attorney.' "

A literal copy of the Brief of the Hon. Zoilo Dueño González, District Attorney, is attached hereto. A literal copy of the Judgment entered on June 24, 1965, is also attached hereto.

D. The Federal questions sought to be reviewed were first raised in the Brief of the Petitioner submitted to the Superior Court of Puerto Rico, San Juan Part (Record Pages 2 and 3). In the judgment dated June 24, 1965, the Superior Court as Court of appeals ruled against the petitioner (Record pages 8 to 11). The same federal and constitutional question were raised in the Petition for Writ of Certiorari before the Supreme Court of Puerto Rico (Record pages 1 to 36), with a specification of them in the assignment of errors (Record pages 2 to 3). The Supreme Court of Puerto Rico ruled against the petitioner refusing to issue a writ of certiorari, thus affirming the judgment appealed from (attached to the record). The federal questions were further raised before the Supreme Court of Puerto Rico in a Motion for Reconsideration filed by

the petitioner and a Motion for Reconsideration filed by the Solicitor General of Puerto Rico. (Motion for Reconsideration Attached to the Record).

Argument

The District Court of Puerto Rico, Río Piedras Part, found the defendant, María Rivera Delgado, guilty of the crime of petit larceny and consequently sentenced her to pay a fine of $25.00 or, in default thereof, to the corresponding subsidiary imprisonment. She appealed.

The Prosecuting Attorney agrees with Counsel for Petitioner as well as the Solicitor General of Puerto Rico, and all stated the following principles of law.

"6. The Honorable trial Judge subjected the defense witnesses to an intense examination of such nature that it violated the defendant's substantial rights."

"7. The trial Court committed error in subjecting the witnesses for the defense to an examination that violated the Constitutional right of the defendant to a due process of law." (Record pages 14-20.)

"as may be seen both errors assigned involve the undue participation of the lower court in the cross-examination of the witnesses for the defense, in such a manner that the defendant was deprived of an impartial and fair trial thereby."

"In order to determine correctly the facts on which these errors are based, we have thoroughly and patiently read the transcript of the evidence attached to the record which includes all the testimonies offered, both of the witnesses for the prosecution and for the defense, and it has led me to the conclusion that actually —and perhaps unconsciously— the Judge who presided the hearing of the case overstretched his mission and, consequently, the defendant did not have an impartial and fair trial."

"Although the examination of the witnesses for The People could to a certain point be justified if we consider that in that Court the position of prosecuting attorney does not exist and no private prosecuting attorney participated in the case, we must conclude that the cross-examination of the wit-

nesses for the defense went beyond that is reasonable and that the Court unconsciously —we repeat— showed apparent prejudice, but prejudice nonetheless, detrimental to defendant's rights, discharging a mission that clearly corresponded to the prosecuting attorney."

Our Constitution guarantees the fundamental principle that — "The dignity of the human being is inviolable. All men are equal before the law." However, the trial Judge denied the fundamental rights of the defendant by submitting her to a partial trial and depriving her of the right to liberty without the due process of law. (Article II Bill of Rights-Section I and 7 Constitution of the Commonwealth of Puerto Rico, Law of Puerto Rico annoted, Section I and 7).

The defendant was at a disadvantage before the Hon. District Judge by virtue of the type of interrogatory he was conducting. The accused, represented by her counsel, was prevented from raising any objections before the Hon. Judge, under pain of contempt of court. This procedure, in our opinion, violates the constitutional principle of due process of law.

"It is said to be difficult to frame a definition of 'due process of law' which shall be perspicuous, comprehensive, and satisfactory. However the spirit of these provisions, as applied to criminal prosecutions, is, in brief, that no person can be made to suffer for a criminal offense unless the penalty be inflicted by 'due process of law', that is to say, in the due course of legal proceedings according to the rules and forms which have been established for the protection of private rights. A criminal prosecution based upon a law which is not in violation of the Constitution, and conducted according to the settled course of judicial proceedings as established by the law of the state, so long as it includes a notice and hearing or an opportunity to be accorded before a court of competent jurisdiction, according to established modes of procedure, is 'due process' in the constitutional sense." **People v. Coleman, 145 Cal. 609, 614, 79 Pac. 283; Kallock v. Superior Court 56 Cal 229, 240; Hurtado v. People of California. 110 U.S. 516,535, 28 L.Ed. 232.**

The purpose of the constitutional guaranttee of the due

process of law is to protect citizens against arbitrary actions and abuse of power on the part of the legislative, executive, and judicial branches. It is intended to protect the individual rights of man. It has been so held in California from where our Penal Code came, in **Hutchinson v. Cauchlin,** 42 Cal. App. 664, 184 Pac. 435 **American Land v. Zeiss,** 219 U.S.47, 55L. Ed.82, 31 Sup. Ct. Rep 200; **Beck v. Ransome Crummey,** 42 Cal. App. 74, 184 Pac. 431.

With respect to this problem, the Supreme Court of California has stated:

"The essential rights of the individual can not be taken away by any mere declaration of legislative will. The guaranty is a direct prohibition upon the legislature from passing any law depriving any person or class of person in prison, selling or holding in slavery, or in any other way taking away their liberty or divesting them of property, whether real or personal, except by due process and regular proceeding usually only upon the judgment of a court of justice of competent jurisdiction, rendered in proceedings in which such person shall have had his rights fairly adjusticated in accordance with the established rules of law applicable to such cases." **Cohen v. Wright,** 22 Cal. 293.

The provisions of the Fifth and Fourteenth Ammendments to the Constitution of the United States are identical to the provisions of 27 of our Constitution: "No person shall be deprived of his liberty or property without due process of law. No person in Puerto Rico shall be denied the equal protection of the laws." These rights of defendants must be safeguarded by the Courts and can not depend upon the whim of a judge or on the will of a judge working prejudice to the defendant's fundamental rights.

"If his right to a hearing depends upon the will or caprice of others or upon the discretion or will of the judge who is to make a decision upon the issue, he is not protected in his constitutional rights." **Matter of Lambert,** 134 Cal. 626, 86 Am. St. Rep. 296, 55 L.R.A. 856, 66 Pac. 851.

WHEREFORE, petitioner respectfully prays this Hon. Court to issue a writ of certiorari to review the order entered

by the Supreme Court of Puerto Rico in the above-entitled cause.

San Juan, Puerto Rico, this 7th day of December, 1965.

Respectfully submitted,

Vicente Géigel-Polanco
Attorney for petitioner
Box 4029, San Juan, P. R.

CERTIFICATE OF SERVICE

Copy of this Petition for Writ of Certiorari has been served by mail on this date on the Solicitor General of Puerto Rico, Department of Justice, San Juan, Puerto Rico.

San Juan, Puerto Rico, this 7th day of December, 1965.

Vicente Géigel-Polanco
Attorney for petitioner
Box 4029 - San Juan, Puerto Rico

IN THE

SUPREME COURT OF THE UNITED STATES

The People of Puerto Rico,
Plaintiff-appellee

v.

MARIA RIVERA DELGADO,
Defendant-appellant

RECORD OF THE SUPREME COURT OF PUERTO RICO

VICENTE PEREZ DIAZ
Counsel for Appellant
P. O. Box 1155
Río Piedras, Puerto Rico

SOLICITOR GENERAL OF PUERTO RICO
Counsel for Appellee
P. O. Box 192
San Juan, Puerto Rico

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IN THE

SUPREME COURT OF PUERTO RICO

The People of Puerto Rico,
Plaintiff-appellee

v. CE-65-19 Certiorari

MARIA RIVERA DELGADO,
Defendant-appellant

PETITION

To the Hon. Court:

Now comes appellant herein through her undersigned counsel and respectfully states, alleges, and prays:

FACTS

On June 25, 1964, The People of Puerto Rico filed an information in this case against the defendant-apellant, María Rivera Delgado, for the crime of petit larceny. The trial was held before the District Court of Puerto Rico, Río Piedras Part. The Court was presided by the Hon. Pedro Pérez Pérez, District Judge. The Court sentenced the defendant to pay a fine of $25.00 or, in default thereof, to one day in jail for each unpaid dollar.

The defendant considered that the trial court committed

manifest errors in its weighing of the evidence, as well as various errors of law, and appealed from its judgment to the Hon. Superior Court of Puerto Rico, San Juan Part.

Defendant-appellant assigned the following error as committed by the District Court, Río Piedras Part:

1. The trial court committed error in dismissing defendant's motion to the effect that the information did not allege the essential elements of the crime of petit larceny.

2. The Court committed error in refusing to acquit the defendant peremptorily, inasmuch as The People failed to prove the essential elements of the crime of larceny.

3. The evidence introduced was insuficient to convict the defendant of the crime of petit larceny.

4. The evidence for the defense showed beyond reasonable doubt that the defendant did not commit the crime with which she was charged.

5. The evidence for The People and the evidence for the defense show that there is reasonable doubt and such doubt must be decided in favor of the defendant.

6. The Honorable trial Judge subjected the defense witnesses to an intense examination of such a nature that it violated the defendant's substantial rights.

7. The trial court committed error in subjecting the witnesses for the defense to an examination that violated the constitutional right of the defendant to a due process of law.

On June 24, 1965, the Honorable Superior Court of Puerto Rico, San Juan Part, Criminal Section, presided by the Hon. Judge César Bobonis Díaz, entered Judgement affirming the one entered by the Río Piedras Part of the District Court against appellant herein, in case No. 64-4897, for the crime of petit larceny.

On July 8, 1965, appellant moved for reconsideration of the judgment and in support of her motion for reconsideration she specifically referred therein to the request of the Hon. District Attorney who moved for the reversal of the judgment on the basis of **People v. Nieves Alvelo**, 88 P.R.R._____. decided April 1964; **People v. Aletriz**, 85 P.R.R._____; and **People v. de Jesús Villanueva**, decided May 29, 1964.

On July 12, 1965, the Superior Court, San Juan Part, denied the motion for reconsideration. It is to review the Judgment and the Order denying the Motion for Reconsideration entered by the Honorable trial court, that a writ for certiorari is prayed for. The Order disposing of the Motion for Reconsideration was filed July 12, 1965.

GROUNDS OF LAW

1. Appellant bases this petition for certiorari on the following legal provisions:

This petition is authorized by Rule 217, Rules of Criminal Procedure of Puerto Rico, and Rule 15 of the Rules of the Supreme Court of Puerto Rico, effective since July 1, 1961.

The information filed against appellant herein does not allege the essential elements of the crime of petit larceny with which defendant was charged. The law defines the crime of larceny as "the felonious stealing, taking, carrying, leading, or driving away the personal property of another." Section 426, Penal Code. However, this Hon. Court has said: "The criminal intent to deprive the owner permanently of his property is an essential element of the crime of larceny." **People v. Acevedo**, 43 P.R.R. 325.

Where in a prosecution for larceny the evidence only shows possession by the defendants of the stolen object, without any other circumstance connecting him with the theft, it is not sufficient." **People v. Domínguez**, 36 P.R.R. 419. We contend that the crime of larceny includes a series of circumstances constituting essential elements and that in the absence of any one of these, the crime is not committed. **People v. Andrade**, CR-62-282 (June 28, 1963), Bar Association Ref. 1963-143; **People v. Torres**, CR-62-399 (October 2, 1963), Bar Association Ref. 1963-165; **People v. Nieves**, CR-62-99 (September 30, 1963), Bar Association Ref. 1963), Bar Association Ref. 1963-156.

Defendant entered Bargain Town, a commercial establishment, lawfully obtained certain articles and got into line at one of the cash registers in order to pay for them. Defendant

was accompanied by her minor child Awilda López, and when the latter went to a refreshment machine, her mother went after her among a large crowd of people, intending to return to the line to pay. It was at that moment that she was grabbed by Antonio Rodríguez Ocasio, an employee of the establishment, who, without giving the customer any explanation, pushed her and led her into the store office. In our opinion it is the employee who is responsible for the crime, by overdoing his duties.

In these cases, the felonies intent of converting the property, preceded by an unlawful carrying away, are essential elements of the crime of larceny and they must be alleged and proved. The People did not prove that the carrying away was unlawful or that the defendant converted the property to her own use; on the other hand, the defense showed beyond reasonable doubt that the crime charged was not committed.

The evidence for The People as a whole was insufficient to convict the defendant of the crime of petit larceny. A person who proves that her purpose in leaving the line was to look for her minor child where a large crowd had gathered, did not have the criminal intent of performing or committing an unlawful act such as larceny. A specific intent is as a matter of fact an essential element of the crime of larceny. "A specific intent is manifested by the means, manner, and circumstances of performing an act." People v. Palóu, 80 P.R.R. 351.

We are of the opinion that in this case the proceedings were not conducted in the manner prescribed by law. In our criminal procedure the District Judges must make the investigation, examining the witnesses for the prosecution and cross-examining the witneses for the defense. Now, we consider that this must not be stretched beyond what is reasonable and fair in order to discover the truth. When the cross-examination of the witnesses for the defense is of such a nature that it places the witnesses and the defendant in one and the same position, we think that the trial is not the impartial trial to which the defendant is constitutionally entitled.

We again emphasize the fact that a judge who is to weigh the evidence must not act as though he were the prosecuting attorney. We respectfully affirm that the cross-examination conducted in this case in the District Court, Río Piedras Part, violated the defendant's substantial rights.

Our Constitution guarantees an impartial trial by virtue of the due process of law. In Puerto Rico a District Judge is put in the position of being a judge, an arbitrator, and at the same time he must act as a prosecuting attorney to ascertain the facts; but in the investigation of facts he must not take the position of ridiculing and contradicting the witnesses for the defense; if such thing happens, the constitutional principle of a due process of law is violated. The extent to which the cross-examination of the witnesses for the defense by a District Judge may reach should be established once and for all. As well put by the Hon. Zoilo Dueño González, San Juan District Attorney in this case:

> "With respect to the Court's cross-examination of the child, Awilda López, defendant's daughter, as well as of defendant herself — which we do not copy in order not to lengthen this brief — we think that if this Hon. Court reads said testimonies it must unavoidably reach the conclusion that the trial judge went beyond what is reasonable in the sacred mission with which the law entrusts him, thereby depriving de defendant of an impartial and fair trial which our Constitution, as well as our procedural laws, guarantee to every defendant."

> "We think that the instant case presents the same situation involved in **People v. Nieves Alvelo**, decided September 30, 1963; **People v. Martínez Acevedo**, decided April 25, 1963; **People v. Aletriz**, decided June 12, 1962, and **People v. de Jesús Villanueva**, decided May 29, 1964, where, reversing the judgment and ordering new trials for the defendants, our Supreme Court stated:

> > "'... the trial judge submitted the witnesses to an improper interrogatory that deprived the appellant of an impartial trial and in fact discharged

the mission reserved by law to the prosecuting attorney.'"

A literal copy of the Brief of the Hon. Zoilo Dueño González, District Attorney, is attached hereto. A literal copy of the Judgment entered on June 24, 1965, is also attached hereto.

OATH

I, Vicente Pérez Díaz, do under oath declare: that I am apellant's counsel in this case; that the facts alleged in the foregoing Petition are true according to my best knowledge and belief; that I take this oath, instead of apellant, because I am better acquainted than her of the facts and acts of the Superior Court. San Juan Part, that gave rise to the Judgment challenged herein.

San Juan, Puerto Rico, August 10, 1965.

(s) Vicente Pérez Díaz
Counsel for Petitioner
Box 1155, Río Piedras
Puerto Rico

Affidavit No. 13565

Suscribed and sworn to before me by Vicente Pérez Díaz, Esq., of legal age, married, attorney-at-law, and a resident of this city, who is to me personally known, in San Juan, Puerto Rico, on this 10th day of the month of August 1965.

(s) René Muñoz Padín
Notary Public

IN THE

SUPERIOR COURT OF PUERTO RICO

SAN JUAN PART

The People of Puerto Rico
v.
María Rivera Delgado

Criminal No. M-64-2339
Petit Larceny

JUDGMENT

The apellant charged the trial court with the commission of six errors.

She contends that an error was committed when defendant's motion alleging that the information lacked the essential elements of the crime of petit larceny was dismissed.

Larceny is the felonious stealing, taking, carrying, leading, or driving away the personal property of another; petit larceny is when the value of the property taken is less than one hundred dollars.

The information in this case charges that on June 20, 1964, the defendant unlawfully, wilfully, maliciously, and with a criminal intent, with the purpose of depriving the legitimate owner of the possession and enjoyment of this property, stole from Bargain Town store, 65th Infantry Avenue, Río Piedras, a ladies' purse valued at $2.84 and a lamp valued at $3.64.

The information filed clearly charges the crime of petit larceny, wherefore the first error assigned was not committed.

Appellant alleges that the essential elements of the crime of larceny were not proved and that the evidence introduced by The People was insufficient to convict the defendant of the crime of petit larceny. She alleges, moreover, that the evidence for the defense proved that the defendant did not commit the crime charged.

The Court heard the testimony of Antonio Rodríguez Ocasio who, insofar as pertinent, testified as follows: That he is an employee of Bargain Town, a store located in Sabana Llana, Río Piedras. He is in charge of keeping watch. On June 26, 1964, he was standing in the Ladies' Department of Bargain Town and saw the defendant take a bag, walking away with it, tearing off the ticket and throwing it on the floor. That the witness picked up the ticket. He saw the defendant going towards the Lamp and gave it to a child who was going along with her. The defendant went ahead to the Drug Store where she purchased certain items and paid for them. That the defendant left the store near the last cash register of Bargain Town, where many people were standing in line. That she came out on the other side of the

people, followed by the child. That the defendant carried the bag and the child carried the lamp. That the witness stopped the defendant after she had left the store.

If believed, the testimony offered by this witness is sufficient to prove that the crime of petit larceny was committed and that it was committed by the defendant. The second, third, fourth, and fifth errors were not committed.

Apellant alleges the violation of her substantial rights and of the due of process of law because the trial judge subjected the witnesses to an intense interrogatory.

District Attorney Zoilo Dueño González asks us to reverse the judgment entered in this case. He says in his brief that he has thoroughly and patiently read the transcript of the evidence and that it has ".... led me to the conclusion that actually —and perhaps unconsciously— the Judge who presided the hearing of the case overstretched his mission and consequently, the defendant did not have an impartial and fair trial." "Although the examination of the witnesses for The People could to a certain point be justified if we consider that in that Court the position of prosecuting attorney does not exist and no private prosecuting attorney participated in the case, we must conclude that the cross-examination of the witnesses for the defense went beyond what is reasonable and the Court unconsciously —we repeat— showed apparent prejudice, but predudice nonetheless, detrimental to defendant's rights, discharging a mission that clearly corresponded to the prosecuting attorney, if any."

We do not agree with the prosecuting attorney nor with appellant. We think that the cross-examination to which the witnesses for the defense were subjected did not violate any of defendant's substantial rights nor the due process of law.

The judgment entered against appellant herein by the Río Piedras Part of the District Court, in case No. 64-4897, for the crime of petit larceny, is hereby affirmed.

Let this judgment be served.

San Juan, Puerto Rico, June 24, 1965.

(s) César Bobonis Díaz
Superior Judge

Served:

Hon. District Attorney
San Juan, Puerto Rico

Vicente Pérez Díaz, Esq.
1000 Alesia Street
Puerto Nuevo, P. R.

I attest:

Edgardo Rivera Santini
Clerk

By:

Assistant Clerk
6-25

(same title)

ORDER

The Motion for Reconsideration of the Judgment entered in the above-captioned case, is hereby DENIED.

César Bobonis Díaz
Superior Judge

Served:

Hon. District Attorney
San Juan, Puerto Rico

Vicente Pérez Díaz, Esq.
1000 Alesia Street
Puerto Nuevo, P. R.

I attest:

Doris Morales
Acting Clerk

By:

Assistant Clerk
7-12-65

(same title)

PROSECUTING ATTORNEY'S BRIEF

To the Honorable Court:

The District Court of Puerto Rico, Río Piedras Part,

found the defendant, María Rivera Delgado, guilty of the crime of petit larceny and consequently sentenced her to pay a fine of $25.00 or, in default thereof, to the corresponding subsidiary imprisonment. She appealed. Although her appeal is based on seven errors that could well be reduced to four because some of them practically involve the same issue as others, we shall refer only to Nos. 6 and 7, which may be discussed jointly because of the close relation between them and as to which we think that the accused is right.

> "6. The Honorable trial Judge subjected the defense witnesses to an intense examination of such a nature that it violated the defendant's substantial rights.
>
> "7. The trial court commited error in subjecting the witnesses for the defense to an examination that violated the constitutional right of the defendant to a due process of law."

As may be seen both errors assigned involve the undue participation of the lower court in the cross-examination of the witnesses for the defense, in such a manner that the defendant was deprived of an impartial and fair trial thereby.

In order to determine correctly the facts on which these errors are based, we have thoroughly and patiently read the transcript of the evidence attached to the record which includes all the testimonies offered, both of the witnesses for the prosecution and for the defense, and it has led me to the conclusion that actually —and perhaps unconsciously— the Judge who presided the hearing of the case overstretched his mission and, consequently, the defendant did not have an impartial and fair trial.

Although the examination of the witnesses for the People could to a certain point be justified if we consider that in that Court the position of prosecuting attorney does not exist and no private prosecuting attorney participated in the case, we must conclude that the cross-examination of the witnesses for the defense went beyond what is reasonable and that the Court unconsciously —we repeat— showed apparent prejudice, but prejudice nonetheless, detrimental to

defendant's rights, discharging a mission that clearly corresponded to the prosecuting attorney, if any. Let us see:

The first witness to testify for the defense was Mrs. Francisca Rivera Soto. When the defense was through with said witness, the trial judge began the cross-examination. We quote below part of the cross-examination to which she was subjected. (See middle of p. 4, Transcript of Evidence, 2d part.)

"Judge: Where did you meet Mrs. María Rivera? How did you meet her?
Witness: She is my sister.
J. Hadn't you seen one another that day?
W. No, sir, because I...
J. Did you only see her when she was at the cash register?
W. When she was in the store.
J. Weren't you with her in the store?
W. No, sir.
J. She is your sister, she is in the store, you are, of course, related; didn't you address her, didn't you ask her how she was? 'How is your family?' Nothing? And you saw a man pushing her around and you didn't even attempt to ask that man, 'Listen, why are you pushing my sister?' Nothing at all; rather, you stayed to see how it all ended.
W. Well, because I saw that she was coming to the register to pay for her articles.
J. When you saw that your sister was being pushed around in another direction, didn't you go to see what had happened —you saw that she was being pushed. Were you content just to keep looking at her, didn't you stop to ask, 'Why did you push my sister?'
W. No, sir, I was paying."

It is self evident that the manner in which the trial court conducted that cross-examination was not intended to

clarify or elucitate any doubtful point remaining after the questions asked by defendant's counsel. Rather, it was merely meant to doubt the veracity of what said witness had previously testified, while it must have reasonably been presumed that she was telling the truth, inasmuch as up to that moment nothing to the contrary had been established.

Let us now take up the incident with Mrs. Maggie Rivera, another witness also introduced by the defendant. While counsel for the defense examined her in connection with the testimony she had given to the Judge that had made the preliminary investigation, the Court interrupted counsel for the defense, thus: (See middle of p. 6, Transcript of Evidence.)

"Judge: He is asking you whether you gave the same testimony you are giving now to the Judge that made the investigation—remember that you are testifying under oath. Remember that if you say anything untrue you may be guilty of perjury and that means some 5 years in jail.
Witness: I said that I was behind the lady, that she left the line to take hold of a child, that the man was pushing her and that the child was at the refreshment machine.
Judge: Did you tell that to the investigating Judge?
Witness: Yes, sir."

When counsel for the defense was through examinig that witness, the Judge renewed his cross-examination and asked her, among others, the following questions: (See beginning of p. 7, Transcript of Evidence.)

"Judge: Don't you know her, yes or no?
Witness: No, sir.
J. Haven't you ever seen her?
W. No, sir. I stayed in the store until she was taken to the office. I remained there until she left the office and then I asked her what the matter was.
J. Have you any particular interest in this case?
W. I have no interest, but...

J. You are not related, you do not know one another, yet you were worried about her.

W. Well, one always likes to ask.

J. After you purchased and paid, did you remain there three quarters of an hour to ask about the case?

W. I remained out there until she came out of the store.

J. Was't she paying?

W. I took my package and I went ahead through the store.

J. Didn't you say a 'while ago that you had paid?

W. Yes, sir, I paid. I was leaving when I noticed the incident and I stayed.

J. Did you see her being pushed by a man who was taking her into the store? What did that mean to you? Why were you interested in this matter? Instead of going home you stayed three quarters of an hour roaming about the store. What was your interest in this case?

W. I didn't know her, I am not related to her, and I have no interest in this case.

J. Did you say that you have no interest in this case?

W. None, but since one always likes to learn what is happening, I remained in order to find out what had happened.

J. Do you mean to tell me that after you finished making your purchase, you paid for your merchandise, you remained standing or roaming about the store for three quarters of an hour just to find out what had happened?

W. Well, since one always likes to learn what happens, I remained to see what had happened.

J. (Makes a remark that can not be transcribed.)

W. I did not know why she had been detained or anything.

J. At what time was that?

W. Between half past three and four o'clock.

J. Did you go out ahead of her?

W. She and the child came out, they came out with me.

J. Then, when she came out you went to her and told her, 'Listen, what happened to you?'

W. I asked her what was the matter.

J. You asked her what was the matter without knowing her and without having any interest in the case?

W. I asked her what the matter was.

. . . . . .

J. Did you become interested in the case, are you a protector, have you an agency for the protection of people or something like that?

W. No, sir.

. . . . . .

J. An explanation as to how the child ran to the machine. Tell me, madame, is it true or not that the child was behind her mother waiting in line to pay?

W. The lady (can not understand —can not be transcribed.)

J. Tell me whether or not it is true that the child was behind the lady when she was paying? Because I know that the child moved from the line towards the refreshment stand and her mother or the lady left the line to take hold of her."

The trial court's cross-examination of this witness continued along this same line. What need did the Judge have to detach himself from his position as an impartial trier of facts to become a prosecutor, which mission is reserved by law to the prosecuting attorney?

With respect to the Court's cross-examination of the child, Awilda López, defendent's daughter, as well as of defendant herself —which we do not copy in order not to lengthen this brief— we think that if this Hon. Court reads said testimonies it must unavoidably reach the conclusion that the trial judge went beyond what is reasonable in the sacred mission with which the law entrusts him, thereby depriving the defendant of an impartial and fair trial which our Constitu-

tion as well as our procedural laws guarantee to every defendant.

We think that the instant case presents the same situation involved in **People v. Nieves Alvelo**, decided September 30, 1963; **People v. Martínez Acevedo**, decided April 25, 1963; **People v. Aletriz**, decided June 12, 1962, and **People v. de Jesús Villanueva**, decided May 29, 1964, where, reversing the judgments and ordering new trials for the defendants, our Supreme Court stated:

> "... the trial judge submitted the witnesses to an improper interrogatory that deprived the apellant of an impartial trial and in fact discharged the mission reserved by law to the prosecuting attorney."

WHEREFORE we think, unless this Court has a different opinion, that the judgment rendered in this case must be reversed and that the record must be sent to the District Court of Puerto Rico, Río Piedras Part, for a new trial.

San Juan, Puerto Rico, March 12, 1965.

(s) Zoilo Dueño González
District Attorney

I CERTIFY: That on this same date I sent a copy hereof to Vicente Pérez Díaz, Esq., counsel for the defendant, to his postal address at 1000 Alesia Street, Puerto Nuevo, P. R.

San Juan, Puerto Rico, March 12, 1965.

(s) Zoilo Dueño González
District Attorney

BRIEF

In the common law, larceny had a different meaning, different from the meaning we now have in our statute. Etymologically, in the common law the word "larceny" was

derived from the Norman word "larcyn" —when the French dominated the British— and according to the linguistic connotation of that time it means "a felonious and wrongful taking and carrying away, by any person of the personal goods of another, with felonious intent to convert them to his own use and make them his own property without the owner's consent." Beginning with this original definition in accordance with its linguistic origin, different definitions had been developed and elaborated in judicial decisions. Wharton, defines the crime of larceny as "The fraudulent taking and carrying away of a thing without claim of right, with the intention of converting it to a use other than that of the owner." Wharton, Criminal Law, sec. 862. Bishop, defines it as "The taking and removing, by trespass, of personal property which the trespasser knows to belong either generally or specially to another with the felonious intent to deprive him of his ownership therein; and perhaps it should be added, for the sake of some advantage to the trespasser!" Bishop, Criminal Law, sec. 758.

In the Common Law a distinction was made between the crimes of larceny and false representation, in such a way that the one is not included in the other —they are different crimes. Larceny, as we have seen from its historical meaning and from the definitions of authorities, consists of the unlawful taking of property belonging to another, with the felonious intent of permanently depriving the owner of the property. False representation arises from a legal transaction in which a fraudulent intent or fraud is later discovered.

Let us examine the essential elements of the crime of larceny according to our statute. Section 426, 429; 484 and 488 of California. The taking —as it is called in the California Code— is an essential element, and the taking is a trespass. The taking implies the control of the property coming to the possession of the accused. Kemos v. State, 89 Ala. 52, 7 So. 413; Croom v. State, 7 Ala. 14; People v. Rogers, 22 N.Y. App. Div. 147, 47 N.Y.S. 893; Com. v. Luchis, 99 Mass. 431, 96 Am. Dec. 769. For the taking to be complete the defendant must be beyond the owner's control, except when to

obtain the property there has previously been a trespass; there must be an illegal act at the time of stealing the articles or property. "Nor is possession obtained until the goods are completely severed from the possession and control of the owner". People v. Meyer, 75 Cal. 383, 17 Pac. 431.

Another essential element of the crime of larceny is "carrying away", asportation," which in Spanish is apoderamiento. "In the crime of larceny the possession of the thing stolen is the esential element and it is unnecessary to prove its use." People v. Santiago, 28 P.R.R. 219. In the crime of larceny, the accused takes the merchandise or property illegally from the possession of another. People v. Ríos, 69 P.R.R. 774.

To constitute larceny there must be a trespass. This principle has been clearly elaborated in the decisions of States where the Common Law is prevalent. "To constitute larceny there must be a trespass in the original taking. One who has acquired possession bona fide can not thereafter commit larceny of the thing so possessed." Wright v. Lindsay, 20 Ala. 428; Fulton v. State, 13 Ark. 168, Finlayson v. State, 46 Fla. 81, 35 So. 203; Abrams v. State, 121 Ga. 170, 48 S.E. 965; Johnson v. People, 113 Del. 99; Snapp v. Cam., 82 Ky. 173; People v. Taugher, 102 Mich. 598, 61 N.W. 66; State v. Stone, 68 Mo. 101. People v. Cruger, 102 N.Y. 510, 7 N.E. 555, 55 Am. Rep. 830; State v. England, 53 N.C. 399, 80 Am.Dec. 334; Krause v. Com., 93 Pa.St. 418, 39 Am.Rep. 762; State v. Lindley, 13 S.D. 248, 83 N.W. 257; Hits v. State, 9 Yerg. 198; Jones v. State, 49 S.W. 387; Hill v. State, 57 Wis. 377, 15 N.W. 445.

In the case at bar the owner of the property retained control of the articles and kept them. In this case to constitute the crime of larceny it should have been necessary for the defendant to leave with the articles. She wanted to pay at the cash register —she was not allowed to, and the articles remained as they always had been: in possession of the owner.

Another essential element of the crime of larceny is the criminal intent to deprive the owner permanently of the stolen property. People v. Acevedo, 43 P.R.R. 325. The "animus furandi" must exist. "An essential element in the crime

of larceny is that the thief should have the felonious intent, the intent to steal or **animus furandi**, that is, the intent to deprive the owner feloniously and permanently of his property, at the time of the taking of possession. If such an intent does not exist at the time of the taking, neither is formation afterward nor any subsequent appropriation of the property can make the larceny complete." **People** v. **Brown**, 105 Cal. 66, 38 Pac. 518; **People** v. **Raschke**, 73 Cal. 378, 15 Pac. 13; **People** v. **Jackson**, 133 Cal. 462, 71 Pac. 566; **People** v. **Morino**, 85 Cal. 515, 24 Pac. 892; **People** v. **Jersey**, 18 Cal. 337.

"The intent to steal is the intention to take the goods of another as a thief takes, and theraby to deprive the owner permanently of the use of them. The elements of **animus furandi** have been thus started: the thing must be taken without any fair claim of right, with the intent to appropriate so far as to deprive the owner of it permanently, knowingly, or with the **bona fide** belief that the taking is against the owner's consent and intended disposal of the thing." **Bodee** v. **State** N.Y.L. 149, 30 Atl. 681; **Brite** v. **State**, Tex. Cr. App. 1897, 43 S.W. 342, 344; **State** v. **Caddle**, 35 W.Va. 73, 12 S.E. 1098.

"If without the knowledge or consent of the owner, but with the belief that he will be willing to sell, one takes goods with the intention of regularly paying for them there is no felonious intent and therefore no larceny." **Mason** v. **State**, 32 Ark. 238.

Analyzing the evidence introduced in the trial court, it is clearly evident that the property was obtained with the consent of the owner and in a lawful manner. We have said and analyzed that to constitute the crime of larceny there must be a trespass. There was none in this case.

"The first requisite of larceny is a felonious, fraudulent, or unlawful taking by the thief. A taking of posession by him of goods subject to larceny is an essential element of the offense; there must be such a caption or taking that the accused will acquire dominion over property, enabling him to take actual custody or control thereof, and amounting to a trespass or evidence showing that possession was not obtained in an unlawful manner."

An analysis of the evidence for The People leads us to consider the following questions:

The first witness for The People was Antonio Rodríguez, an employee of Bargain Town:

"Witness: I told her to go to the office with me.
Judge: Did you tell her why?
Witness: Not at the moment.
Judge: What did she do?
Witness: She told me, 'Let's go.'
Judge: What happened in the office?
Witness: In the office we explained to her that she had not paid for that, asking whether she was going to pay for it and she said that she was waiting for her turn to pay for it.
Judge: That she was what?
Witness: That she was waiting in turn beyond the cash register to pay for it. That she was going to pay for it."

This testimony shows that the accused did not have the intent to commit the crime with which she was charged.

In connection with the testimony of the witness for The People — Antonio Rodríguez — the accused testified as follows:

"Witness: Well, I bought a box of Varón Dandy in the drug store, then I went to the purses department and I took a purse and thereafter I went to the lamps department and I took one, returning to the cash register to get into line in order to pay for those two items.
Defense: While you were in the line, what happened?
Witness: While I was standing in line, my child left the line and went to the hall where the machine is located — she was making up her mind. She left with the lamp in her hands.
Defense: What did you do then?

Witness: I left the line, went to the hall looking for her and returned to the line to wait for my turn to pay.

Defense: Did you leave the building at any time?

Witness: No, sir, I was inside the store, in the hall.

Defense: Where were you taken?

Witness: Well, when I was coming back after getting my child from the hall to get into line where I was paying, this man accused me and kept talking to me saying, 'Lady, lady, go this way.' Then I asked him where he was taking me. 'Go on, go on,' and he took me to the office."

. . . . . .

"Witness: Yes, sir. Then the man in the office asked me where I lived. He then told me to pay and leave. I told him then that I was not going to sign the paper he was giving me to sign, but that I was not going to pay either and that I would not leave until the police came — he had threatened me with the police. I told him to bring the police and that then I would leave with his authorization, the policeman's."

We have shown that The People did not prove the essential elements of the crime of larceny, such as trespass, depriving the owner permanently of his property. The acts performed by the accused do not constitute the criminal intent required in the commission of this crime.

The accused was at a disadvantage before the Hon. District Judge by virtue of the type of interrogatory he was conducting. The accused, represented by her counsel, was prevented from raising any objections before the Hon. Judge, under pain of contempt of court. This procedure, in our opinion, violates the constitutional principle of due process of law.

"It is said to be difficult to frame a definition of 'due process of law' which shall be perspicuous, comprehensive, and satisfactory. However, the spirit of these provisions, as applied to criminal prosecutions, is, in brief, that no person

can be made to suffer for a criminal offensive unless the penalty be inflicted by 'due process of law', that is to say in the due course of legal proceedings according to the rules and forms which have been established for the protection of private rights. A criminal prosecution based upon a law which is not in violation of the Constitution, and conducted according to the settle course of judicial proceedings as established by the law of the state, so long as it includes a notice and hearing or an opportunity to be accorded before a court of competent jurisdiction, according to established modes of procedure, is 'due process' in the constitutional sense." **People** v. **Coleman**, 145 Cal. 609, 614, 79 Pac. 283; **Kallock** v. **Superior Court**, 56 Cal. 229, 240; **Hurtado** v. **People of California**, 110 U.S. 516, 535, 28 L.Ed. 232.

The purpose of the constitutional guarantee of the due process of law is to protect citizens against arbitrary actions and abuse of power on the part of the legislative, executive, and judicial branches. It is intended to protect the individual rights of man. It has been so held in California from where our Penal Code came, in **Hutchinson** v. **Caughlin**, 42 Cal. App. 664, 184 Pac. 435; **American Land** v. **Zeiss**, 219 U.S. 47, 55 L. Ed. 82, 31 Sup. Ct. Rep. 200; **Beck** v. **Ransome Crummey**, 42 Cal. App. 74, 184 Pac. 431.

With respect to this problem, the Supreme Court of California has stated:

"The essential rights of the individual can not be taken away by any mere declaration of legislative will. The guaranty is a direct prohibition upon the legislature from passing any law depriving any person or class of person in prison, selling or holding in slavery, or in any other way taking away their liberty or divesting them of property, whether real or personal, except by due process and regular proceeding usually only upon the judgment of a court of justice of competent jurisdiction, rendered in proceedings in which such person shall have had his rights fairly adjudicated in accordance with the established rules of law applicable to such cases." **Cohen** v. **Wright**, 22 Cal. 293.

The provisions of the Fifth and Fourteenth Amendments

to the Constitution of the United States are identical with the provisions of 27 of our Constitution: "No person shall be deprived of his liberty or property without due process of law. No person in Puerto Rico shall be denied the equal protection of the laws." These rights of defendants must be safeguarded by the Courts and can not depend upon the whim of a judge or on the will of a judge working prejudice to the defendant's fundamental rights.

"If his right to a hearing depends upon the will or caprice of others or upon the discretion or will of the judge who is to make a decision upon the issue, he is not protected in his constitutional rights." **Matter of Lambert**, 134 Cal. 626, 86 Am.St.Rep. 296, 55 L.R.A. 856, 66 Pac. 851.

WHEREFORE appellant respectfully prays this Honorable Court to issue a writ of certiorari to review the proceedings conducted in the Superior Court of Puerto Rico, San Juan Part, Criminal Division.

San Juan, Puerto Rico, August 10, 1965.

(s) **Vicente Pérez Díaz**
Counsel for Petitioner
1000 Alesia Street
Puerto Nuevo, Puerto Rico

CERTIFICATE OF SERVICE BY MAIL

I CERTIFY: That on even date herewith, August 10, 1965, I sent by registered mail a duly-stamped envelope addressed to the Hon. Solicitor General of Puerto Rico to his postal address, Department of Justice, San Juan, Puerto Rico, containing a copy of the preceding Petition for Certiorari. In addition, notice has been given to the Hon. César Bobonis Díaz, Superior Judge, San Juan Part, Superior Court, Criminal Section, Santurce, Puerto Rico; and to the Hon. Zoilo Due-

ño González, District Attorney, Superior Court, Criminal Section, Santurce, Puerto Rico.

San Juan, Puerto Rico, August 10, 1965.

(s) Vicente Pérez Díaz
Counsel for Petitioner
Box 1155
Río Piedras, Puerto Rico

(same title)

SOLICITOR GENERAL'S REPORT

To the Honorable Court:

Now comes defendant- appellee, through the Solicitor General, and respectfully states and prays:

SUMMARY OF FACTS

In the District Court of Puerto Rico, Río Piedras Part, on June 25, 1964, an information was filed against María Rivera Delgado, for the crime of petit larceny. 33 L.P.R.A. 1684.

After the corresponding trial, the District Court, Río Piedras Part, found the defendant guilty. It sentenced her to pay a fine of $25.00 or, in default thereof, to the corresponding subsidiary imprisonment.

Feeling aggrieved by the judgment of conviction, the defendant appealed to the Superior Court of Puerto Rico, San Juan Part. To support properly the errors allegedly committed by the District Court, defendant-appellant moved for permission to transcribe the tape recording of the proceedings conducted before the District Court. On November 16, 1964, defendant-appellant submitted to the Superior Court the transcript of the notes taken at the trial.

On January 21, 1965, defendant-appellant filed her brief

in the Superior Court making the following assignmnents of error:

"1. The trial court committed error in dismissing defendant's motion to the effect that the information did not allege the essential elements of the crime of petit larceny.

"2. The Court committed error in refusing to peremptorily acquit the defendant, inasmuch as The People failed to prove the essential elements of the crime of larceny.

"3. The evidence introduced was insufficient to convict the defendant of the crime of petit larceny.

"4. The evidence for the defense showed beyond reasonable doubt that the defendant did not commit the crime with which she was charged.

"5. The evidence for The People and the evidence for the defense show that there is reasonable doubt and such doubt must be decided in favor of the defendant.

"6. The Honorable trial Judge subjected the defense witnesses to an intense examination of such a nature that it violated the defendant's substantial rights.

"7. The trial court committed error in subjecting the witnesses for the defense to an examination that violated the constitutional right of the defendant to a due process of law."

Then, the Hon. District Attorney of San Juan filed his brief answering the issues raised by counsel for defendant-appellant. The prosecution stated in its brief, insofar as pertinent, as follows:

"... Although her appeal is based on seven errors that could well be reduced to four because some of them practically involve the same issue as others, we shall only refer to Nos. 6 and 7 which may be discussed jointly because of the close relation between them and as to which, we think that the defendant is right. Those errors read:

" '6. The Honorable trial Judge subjected the

defense witnesses to an intense examination of such a nature that it violated the defendant's substantial rights.

" '7. The trial court committed error in subjecting the witnesses for the defense to an examination that violated the constitutional right of the defendant to a due process of law.'

"As may be seen both errors assigned involve the participation of the lower court in the cross-examination of the witnesses for the defense, in such a manner that the defendant was deprived of an impartial and fair trial thereby.

"...we have thoroughly and patiently read the transcript of evidence attached to the record which includes all the testimonies offered, both of the witnesses for the prosecution and for the defense, and it has led me to the conclusion that actually — and perhaps unconsciously— the judge who presided the hearing of the case overstretched his mission and, consequently, the defendant did not have an impartial and fair trial.

"Although the examination of the witnesses for The People could to a certain point be justified if we consider that in that Court the position of prosecuting attorney does not exist and no private prosecuting attorney participated in the case, we must conclude that the cross-examination of the witnesses for the defense went beyond what is reasonable and that the court unconsciously —we repeat— showed apparent prejudice, but prejudice nonetheless, detrimental to defendant's rights, discharging a mission that clearly corresponded to the prosecuting attorney, if any. Let us see:"

"

.....

"It is self evident that the manner in which the trial court conducted that cross-examination was not intended to clarify or elucidate any doubtful point remaining after the questions asked by defendant's counsel. Rather, it was merely meant to doubt the veracity of what said witness had previously testified, while it must

have reasonably been presumed that she was telling the truth, inasmuch as up to that moment nothing to the contrary had been established.

"....

"...What need did the Judge have to detach himself from his position as an impartial trier of facts to become a prosecutor, which mission is reserved by law to the prosecuting attorney?

"....

"We think that the instant case presents the same situation involved in **People** v. **Nieves Alvelo**, decided September 30, 1963; **People** v. **Martínez Acevedo**, decided April 25, 1963; **People** v. **Aletriz**, decided June 12, 1962, and **People** v. **de Jesús Villanueva**, decided May 29, 1964, where, reversing the judgments and ordering new trials for the defendants, our Supreme Court stated:

" '...the trial judge submitted the witnesses to an improper interrogatory that deprived the appellant of an impartial trial and in fact discharged the mission reserved by law to the prosecuting attorney.' "

We have examined the original record of the Superior Court. Attached to the record is the transcript of the taped proceedings conducted in the District Court of Río Piedras. The transcript contains —we may say in passing— certain blanks and incoherencies, but in general terms it reflects the fundamental aspects of the proceedings.

Notwithstanding the blanks and incoherencies, a calm and dispassionate analysis of that record reveals that the Hon. District Judge's interrogatory of the witnesses for the defense was merely intended to contradicting and ridiculing them, thereby showing manifest partiality to the prejudice of appellant's substantial rights.

This Hon. Supreme Court, when rejecting the general imputation of "judge-prosecutor" made against the entire judiciary corresponding to our District Court system, stated as follows in **People** v. **Barranco**, decided June 24, 1965:

"The coined phrase 'judge-prosecutor' arises in turn

from a false concept attributed to # 29. This section does not destroy the trier to place in his stead the prosecuting attorney with all the objectives of the prosecuting attorney who pursues conviction. The questioning function imposed on him is not by itself incompatible with that of acting as a judge if in performing said function he is not impropertly imposed purposes and objectives not arising from the statute or not intended by the lawmaker. The right of a judge to question, with or without express provision of law, is inherent in his very function of administering justice and is consecrated in all the systems of jurisprudence not only as a prerrogative but as a duty in his mission of discovering and clarifying the truth. This Court has so held a matter of principle. It has been more exacting and has imposed individual corrective action in cases generally before a jury in the delicate situation where the effect of a judge's intervention beyond the proper limits may convey to the jury his opinion on the facts or on the credibility of the witnesses. **Likewise, there should be individual correction to the district judge who deviates from the law. ....**" (Bold type ours.)

We think that this is one of those cases that demand an individual corrective. By repelling the doubtful behaviour of a particular judge, defiling his condition as an impartial and fair judge, is that we can prevent the attempt to stigmatize "all the district judiciary as one incapable of rendering a just and impartial verdict." **People v. Barranco, supra.**

We have found no legal basis in the evidence in support of the statement of the Hon. Superior Judge, in view of the acquiescence of the District Attorney in the sense that:

"... We think that the closs-examination to which the witnesses for the defense were subjected did not violate any of defendant's substantial rights nor the due process of law."

We think, unless this Court has a better opinion, that

the judgment rendered against the defendant must be reversed and that a new trial must be granted.

San Juan, Puerto Rico, August 26, 1965.

J. B. Fernández Badillo
Solicitor General

(s) Elpidio Arcaya
Assistant Solicitor General

SERVICE

I CERTIFY: That on this same date I mailed a copy of the foregoing Report to Vicente Pérez Díaz, Esq., counsel for defendant-appellant, to his address, Box 1155, Río Piedras, Puerto Rico.

San Juan, Puerto Rico, August 26, 1965.

(s) Elpidio Arcaya
Assistant Solicitor General

(same title)

ORDER

San Juan, Puerto Rico, September 16, 1965.

The foregoing petition for certiorari is hereby dismissed.

It was so ordered by the Court as witnesses the signature of the Acting Chief Justice, who did not participate.

(s) Pedro Pérez Pimentel
Acting Chief Justice

I attest: (s) Ignacio Rivera
Secretary

(same title)

ORDER

San Juan, Puerto Rico, October 22, 1965.

The motion of the Solicitor General of the 19th inst., is hereby denied.

It was so ordered by the Court as witnesses the signature of the Chief Justice. Associate Justices Messrs. Pérez Pimentel, Hernández Matos, and Rigau did not participate.

(s) Luis Negrón Fernández
Chief Justice

I attest: (s) Joaquín Berríos
Acting Secretary

(same title)

ORDER

San Juan, Puerto Rico, November 9, 1965.

The foregoing motion for reconsideration is hereby denied.

It was so ordered by the Court as witnesses the signature of the Chief Justice.

(s) Luis Negrón Fernández
Chief Justice

I attest: (s) Joaquín Berríos
Acting Secretary

IN THE

SUPREME COURT OF PUERTO RICO

The People of Puerto Rico,
Plaintiff-appellee

v. **CE-65-19** **Certiorari**

María Rivera Delgado,
Defendant-appellant

CLERK'S CERTIFICATE

I, Joaquín Berríos, Acting Secretary of the Supreme Court of Puerto Rico, DO HEREBY CERTIFY:

That the foregoing is a true and faithful translation from Spanish into English of all the documents composing the Record on Appeal in the above-captioned case, the originals of which are under my custody in the record of this case in this office.

IN WITNESS WHEREOF and for the purpose of the appeal taken to the Supreme Court of the United States, I issue these presents after cancelling the amount of $11.70 in internal-revenue stamps, in San Juan, Puerto Rico, this 8th day of December 1965.

Joaquín Berríos
Acting Secretary
Supreme Court of Puerto Rico